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EB-5 Financing Program: Option for Financing Development in the Hospitality Industry

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Introduction

The Immigrant Investor Program—also known as Employment-Based Immigration: Fifth Preference and simply EB-5—is one of the most favorable choices available to foreign investors wanting to immigrate to the United States through investment. The EB-5 visa is open to all nationalities and offers to qualified foreign investors permanent resident status in America, which entitles them to all the rights and benefits of American citizenship except for voting rights. The program is not restricted by age, employment experience, or educational background. There are two pathways through EB-5 to permanent residency: one is through the basic program, which is designed for individual investors, and the other is through the Regional Center Pilot Program, which is designed for capital pooling.

In 2010, another variation of this program was introduced in Congress by Senators Kerry and Lugar called The StartUp Visa Act of 2010, otherwise known as EB-6 Visa. This bill has not been passed by Congress. Nonetheless, it has similar provisions as the EB-5 with regard to capital requirements, job creation and a pathway to permanent residency in the U.S.

Rationale and Statistics behind EB-5

The EB-5 program is regarded as a "win-win-win" program. First, it attracts foreign capital when the availability of capital is limited in the United States. Second, the program helps to create jobs at a time when the unemployment rate in the U.S. is very high. Third, it offers high-net-worth foreign individuals a way to become permanent residents at a time when immigrating to the United States has become difficult.

There are risks associated with the EB-5 program for the investor. One risk is the denial of a green card; another is not getting a return on the invested capital, either in part or in full. Some of the likely reasons for this include (but are not limited to): the possibility that the entity in which the investment has been made goes bankrupt; the project does not become fully operational; the market value of the invested entity declines relative to the capital already invested; or incompetency and inadequate revenue make it difficult to repay investors fully.

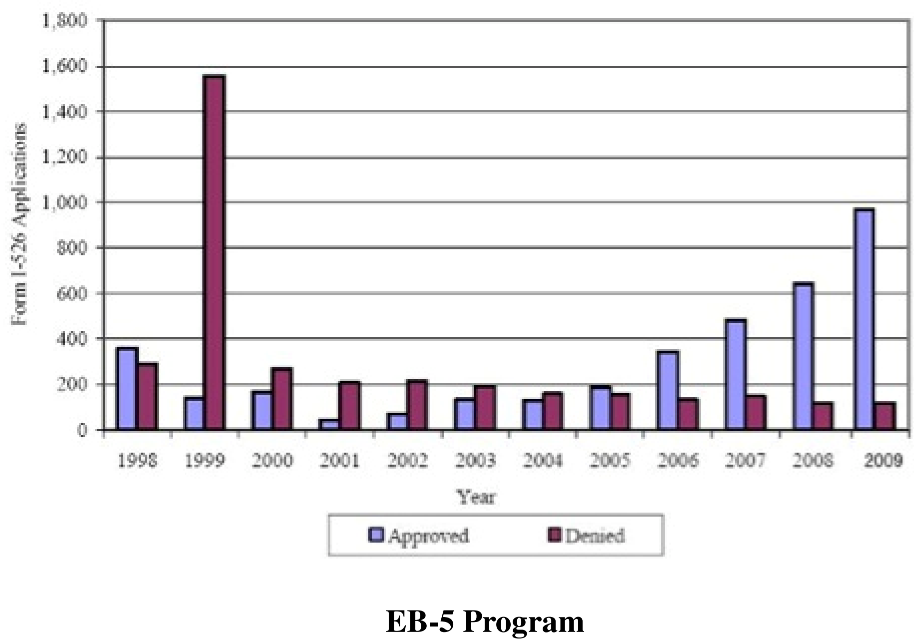
The process of EB-5 immigration investment begins with the submission of Form I-526, the Petition by Alien Entrepreneur. After the I-526 petition has been approved, either Form I-485, the Application to Register Permanent Residence or Adjust Status, is filed with United States Citizenship and Immigration Service (USCIS) for a conditional green card, or a DS-230, the

Application for Immigrant Visa and Alien Registration, is then submitted. The investor and his or her derivative family members are granted conditional permanent residency for two years once the I-485 is approved, or they will be allowed to enter the United States with the status of an intending immigrant. Finally, Form I-829, the Petition by Entrepreneur to Remove Conditions, should be applied for (with documents including evidence of job-creation) at least 90 days before the two-year anniversary of the granting of the green card. If this petition is approved by USCIS, the conditions are removed from the investor's status and the EB-5 applicant and derivative family members will be granted permission to live and work in the United States permanently.

From 1999 to 2004, the number of denied Form I-526 applications exceeded the number approved (see Table 1). However, the situation has changed since 2005. The number of approved forms has not only outnumbered those denied, but has also been increasing dramatically. In FY 2011, 1,563 I-526 forms were approved and only 117 denied (an approval rate of 93%). In the first quarter of FY 2012, the agency approved 1,076 I-526 petitions and denied 222 (an approval rate of 83%). USCIS approved 1,067 I-829 petitions and denied 46 in FY 2011 (an approval rate of 97%). The Department of State issued 2,364 EB-5 green cards between October 1, 2011, and mid-January 2012. Over 9,000 EB-5 visas are estimated to be issued this federal fiscal year, which is close to the statutory cap of 10,000. Approximately 92% of I-526 petitions are filed through regional centers.

Table 1

Form I-526 approvals and denials by USCIS (principals only), FY1998—2009



EB-5 Program

Originally, Congress established the EB-5 visa as part of the Immigration Act of 1990 to promote foreign capital investment and stimulate job creation in the U.S. The applicant is required to invest at least $1 million (or $500,000 in a "targeted employment area") either in relatively new businesses that were created or restructured after November 19, 1990, or in creating new businesses that generate at least 10 full-time jobs, excluding the investor and the immediate family.

Each year, 10,000 EB-5 visas are available for foreign investors. However, foreign investors have not made full use of the EB-5 program as originally expected by Congress. Reasons for the low utilization of this program include a tedious application procedure and a high suspension rate. Some improvement has been made, which has resulted in nearly quadrupling applications in the last two years, from fewer than 800 in 2007 to more than 3,800 applications in the 2011 fiscal year (McGeehand & Semple, 2011). Now, the approval rate is high; for example, 966 of 1028 cases in fiscal year of 2009 were approved. Individual petitions are processed quickly, usually in three to five months. Investors can apply for citizenship in five years if they want.

The basic program requires that 10 full-time positions be created for American workers; additionally, investors have to be actively involved in management and operations instead of only ownership. Generally, funds are invested in a business that the investor has established or acquired, although main ownership is not necessary.

Regional Center Pilot Program

The pilot program essentially has similar requirements as the EB-5 basic program, except that the pilot program offers an additional economic unit often called a *regional center*. The USCIS defines a regional center as an area qualified to receive immigrant investor investments in order to promote regional economic and employment growth (USCIS 2000a). Under the regional center pilot program, the investor's role is more like a limited partner, which means it is not necessary for him/her to participate in management. Additionally, the capital is invested in a "project" in an approved regional center. Furthermore, the program benefits investors through the permission of indirect creation of employment counted toward the minimum number of jobs created by each foreign investor. The regional centers in the pilot program play a role as matchmaker between projects and investors. On May 1, 2012, at the Association to Invest in the USA EB-5 conference at Laguna Hills, California, the four "most successful" regional centers stated the amount of capital they had raised through the EB-5 projects as $1.3 billion, $800 million, $400 million, and $200 million. The EB-5 pilot program was re-authorized by Congress and signed by President Obama on September 28, 2012, for another three years.

It is necessary to clarify the difference between the USCIS EB-5 immigrant investor pilot program and the EB-5 visa basic program. The end of the pilot program does not necessarily mean the end of the EB-5 program. The immigrant investor pilot program, one of the longest running and most turbulent of the pilot programs, has been subject to termination since the program's birth in 1992. This program has routinely been renewed, however. The first extension was authorized by President G. W. Bush in December 2003, and has been re-extended, most recently by President Obama in 2009 (Waller, 2011).

There are three options for using the regional center program for capital generation. The first is creating a regional center from the start. The second is forming an investment project in an industry that already has approval for an existing regional center. The third is identifying a regional center in a geographic location of interest and seeking an amendment to accommodate the project.

According to USCIS, in fiscal year 2010, 36 out of 110 initial regional center proposals were approved, while 30 were denied. Additionally, 42 amended regional center proposal filings were received. The number of approved regional centers continues to grow.

The number of regional centers in 37 different states, including the District of Columbia and Guam, is illustrated in the following two tables. Thirteen states were without regional centers in July 2011. By far, California and Florida have the highest use of EB-5 capital.

Table 2

The number of regional centers in 37 states and Guam and Washington D.C.

Alabama	2
Arizona	4
California	40
Colorado	4
Florida	19
Georgia	6
Hawaii	5
Idaho	2
Illinois	2
Indiana	1
Iowa	1
Kansas	1
Kentucky	2
Louisiana	3
Maryland	1

Massachusetts	1
Michigan	5
Mississippi	4
Montana	1
Nevada	4
New Jersey	1
New York	8
North Carolina	4
North Dakota	1
Ohio	3
Oklahoma	1
Oregon	1
Pennsylvania	2
South Carolina	1
South Dakota	2
Tennessee	2
Texas	7
Utah	3
Vermont	1
Washington	8
Wisconsin	2
Wyoming	1
District of Columbia	3
Guam	1

Table 3
13 states without a regional center

13 States without a regional center	Alaska, Arkansas, Connecticut, Delaware, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, Rhode Island, Virginia, West Virginia

Issues Associated with EB-5

Though the EB-5 financing program has been beneficial for the U.S. economy, especially since the 2008 global recession and the subprime mortgage crisis in the United States, there are still some critics of the program who believe it is a misuse of the immigration system to stimulate the economy. In the EB-5 program, foreign investors need to invest only $500,000 instead of $1 million if they participate in an EB-5 regional center pilot program that is intended to develop a targeted employment area, which can be either rural areas or areas with a high unemployment rate (at least 50% higher than the national average, USCIS 2000a). What constitutes a targeted employment area for EB-5 purposes are relatively unclear, and because there is no single census tract qualified as a geographic area, the program has been manipulated to make places such as New York "qualified." Fraud and corruption are also problems whose negative impact may actually deter investment (Lee, 2012). An article in *China Daily* warned investors in China about the possibility of being defrauded by Chinese immigration agencies and foreign investment organizations. This is not a uniquely Chinese issue. Similar cases happened in the U.K. as well. Failure of the project can be caused by raising funds from investors before the project is completely approved by USCIS. In addition, some regional centers working with private sector brokers have misled investors into risky projects in order to get a higher commission regardless of the investment's outcome. Furthermore, government administrators' insufficient understanding about how to manage this investment program has led to the rejection of more sophisticated businesses that can generate huge potential profits and jobs (Lee). Therefore, to remain credible, the program needs to be more transparent. A more comprehensively supervised system is needed to deter free-wheeling brokers, as are heavier penalties for misleading investors. Additionally, more business-savvy administrators must be trained to evaluate the projects. Another issue of particular relevance to the lodging industry is the tenant occupancy job creation model. The new requirement by the USCIS rejects employment created under certain circumstances where the tenant is under lease. Due to the unique arrangement of management agreement where the hotel operator, not the owner, hires employees, USCIS is questioning whether those hotel employees should be attributed to the hotel owner or should rather be credited to the hotel operator, thereby denying the foreign investor the ability to count the employees created as his or hers.

Different Industries that Attract EB-5 Financing

As can be seen in Exhibit 1, the top five industries that have attracted EB-5 financing have been hospitality, manufacturing, retail, health care, and office building. The hospitality industry includes not only hotels (accommodations) and restaurants (and other food service and drinking places, such as bars and dining establishments), but also resorts, convention centers, gaming, and entertainment complexes. Further breakdown of the number of property developments in each segment of the hospitality industry is illustrated in Exhibit 2. Both light and heavy manufacturers are categorized under the manufacturing industry. The retail industry ranges from retail property development, such as shopping centers, to retail services and stores. Healthcare is a popular and diversified industry for the EB-5 program; it includes hospitals, nursing residential and senior living facilities, medical care, retirement communities, and assisted living facilities. Lastly, the category of office building consists of building, construction, and investing in office facilities.

Exhibit 1 Different Industries in which EB-5 Regional Centers in 37 States Invest

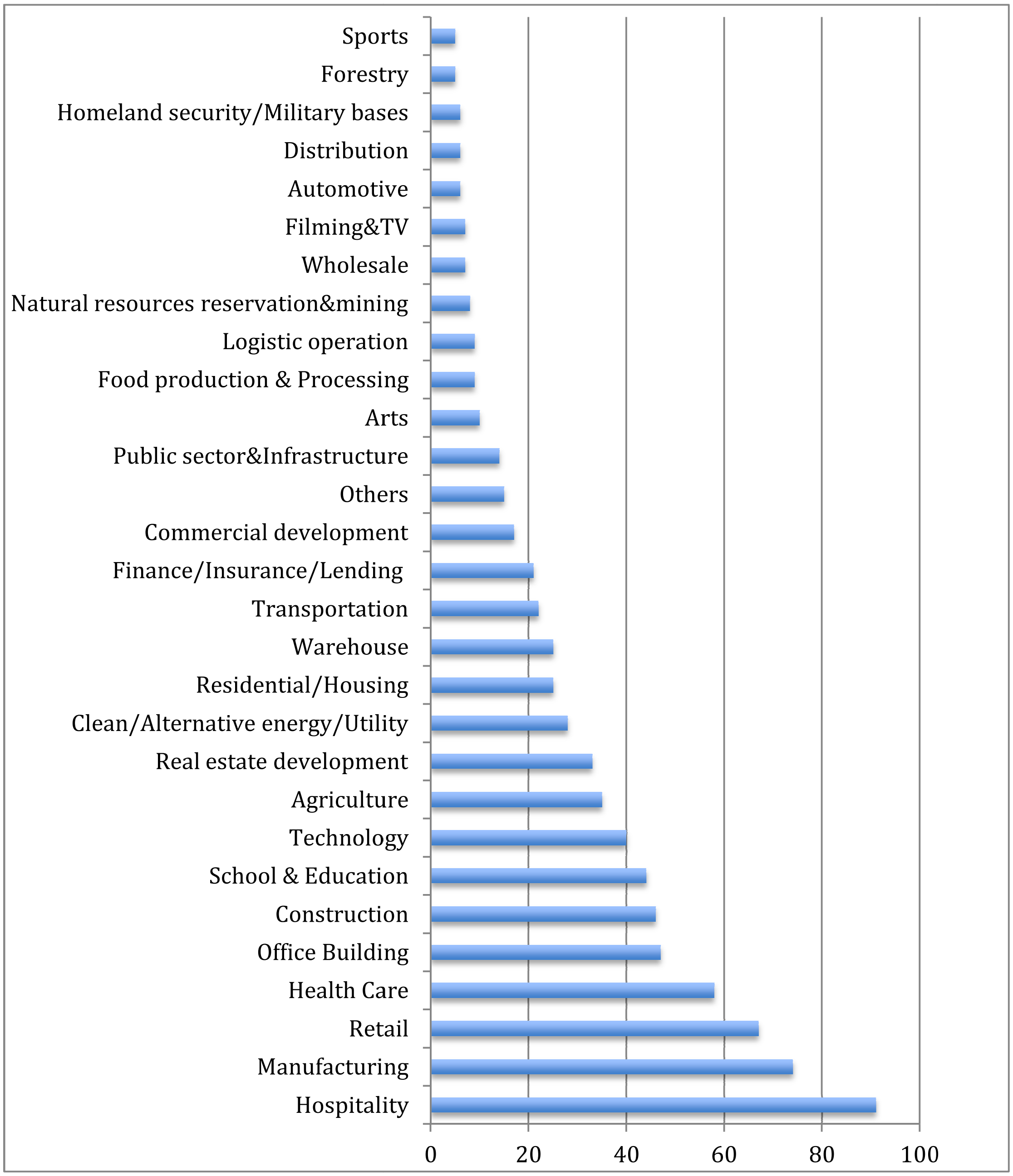
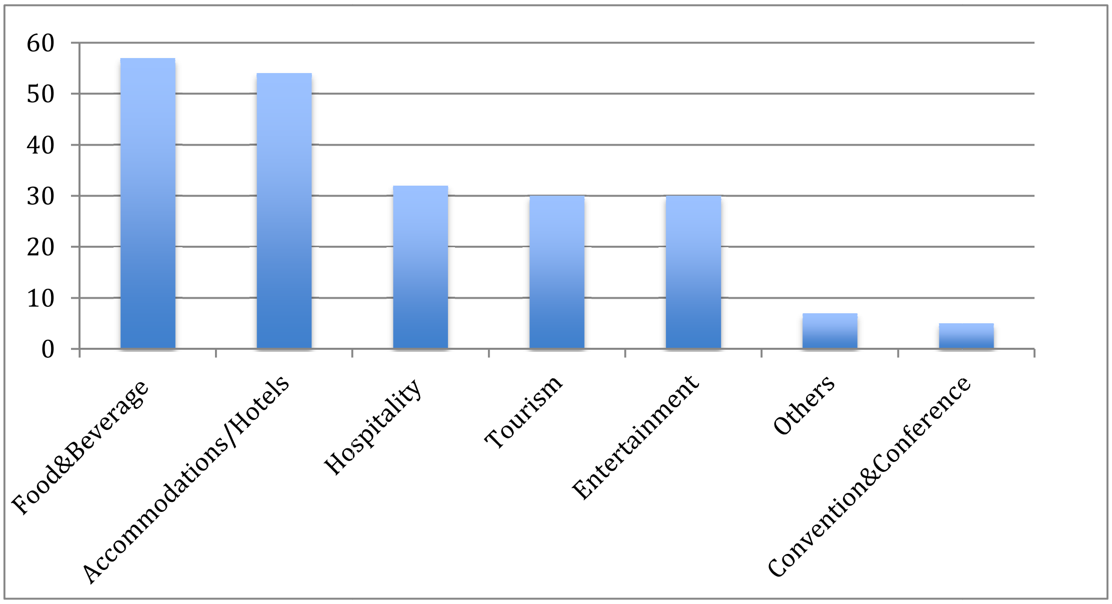


Exhibit 2 Hospitality Industry Segments in which EB-5 Regional Centers in 37 States Invest



EB-5 Program's Importance to the Hospitality Industry

Hotels are highly capital-intensive as well as labor-intensive. On average, $12 million to $17 million is needed to build an average hotel with about 120 rooms. In addition, the hospitality industry is very susceptible to economic changes. The traditional sources of hotel financing were very restrictive during the recessionary years of 2008–2012, which had a devastating effect on hotel development (Brown, 2011). More than 1,400 hotel and resort collateralized mortgage-backed securities loans will be due within a year or two, and the delinquency rate in hospitality is as high as 16.6%. In the aftermath of the financial crisis of 2008, many hotel projects halted or were canceled due to lack of financing. Even now, with the hospitality industry improving and room occupancy rates rising, financing is still difficult to obtain (Morrissey, 2012). In such a tight lending environment, the EB-5 program, as an alternative source of financing for hospitality project development and investment, has become extremely appealing for hotel companies and developers (Butler, 2012). "It's created liquidity in a relatively illiquid market," said Anthony Capuano, the Executive Vice President Global Development at Marriott International.

Therefore, the EB-5 program has gained enormous popularity and has grown significantly in recent years, attracting more than $3 billion of foreign capital in the past five years and creating thousands of jobs in a variety of industries. Furthermore, the President's Council on Jobs and Competitiveness has called for the EB-5 program to be "radically expanded" in the next few years (Lee, 2012). What boosts the interest of hotel developers in the EB-5 program is not only the availability of the financing, but also its affordability. Generally, the priority for foreign investors in the EB-5 program is gaining permanent residency in the U.S.;

hence, they tend to tolerate a lower return on investment rate, which means a lower cost of capital for the hospitality industry. Usually, hotel developers offer less than 4% return on investment to generate funding through EB-5 program. The average return on investment for a typical EB-5 investor annually is approximately 1%, since normally the investor is charged the investment management fee and also shares a certain percentage of the return with the investment management company. By contrast, the typical cost of capital on debt starts at 6%, with some riskier projects costing around 10% or higher. Investors taking an equity stake in hotel projects expect to earn 20% return on investment (Morrissey, 2012). So it is clear that the required rate of return for the EB-5 investor (and by extension the cost of capital of the hotel project) is relatively low compared with the typical cost of capital for hotel projects.

The EB-5 pilot program has also brought numerous benefits to the U.S. economy, especially with banks' diminished lending. Without it, employment creation would not have occurred as much as it has in the communities in which the projects are located. Also, without such funds, only one investor would be able to invest in a project, which means the required total investment for a hotel would be out of reach for many of the current participating investors. Based on these advantages, regional centers have also become necessary and important for hotel financing. Specifically, taking the indirect creation of employment as an example, if a hotel project requires $12 million financing from the EB-5 program, foreign investors would have to create 120 full-time jobs under the basic EB-5 program, which may be very challenging. However, if the same project is sponsored by a regional center, the jobs created can be either direct hotel employees or indirect employees in suppliers or related businesses, such as nearby restaurants. Hotels can also choose to have their own regional centers if they are often involved in huge projects and if they have enough time. Therefore, another attractive quality of the EB-5 program is the flexibility. Most EB-5 capital can be structured as either debt or equity (Ascierto, 2011); additionally, capital can be pooled. For example, 5 to 150 investors in total can generate $2.5 million to $75 million, which may represent a high proportion of the total cost of a project. Hence, Nysse (2011) stated that EB-5 saves money for the hotel industry in today's financial environment, which is one of the toughest for financing.

Reasons for Foreign Investors' Interest in the U.S. and in the Hospitality Industry

Alan X. Reay, President of Atlas Hospitality Group, stated that the EB-5 program has led to Asian capital flowing into the U.S. (Turner, 2012). More than 70% of the dramatic increase in applicants in EB-5 is attributable to Mainland China. Many Chinese investors want to diversify their risk by investing in the U.S. because of the slowing of the economy in China and the fear of a real estate bubble (Turner, 2012). Also, since the Canadian EB-5-like program has recently increased the minimum investment from $400,000 to $800,000 (Butler, 2012), it has made the EB-5 program in the U.S. more appealing to Canadian investors. For example, JMBM's Global

Hospitality Group has worked on more than 40 EB-5 hotel financing projects in recent years.

Specifically, not only has the EB-5 visa program been a vital source of funding for hotel development, acquisition, and renovation projects, but also hotels have been favorable places for foreign investors to acquire green cards. Hotels and the EB-5 program are a good match. The high labor intensity in hotels demonstrates that hotels can satisfy one of the most critical criteria in the EB-5 program for foreign investors, which is creating at least 10 full-time jobs. Being labor-intensive, hotels usually need many employees, ranging from managers to housekeepers, as well as the indirect employment for the corporation's vendors supplying shampoos, towels, and so on; additionally, the building of hotels can stimulate the need for restaurants and other recreation facilities. Thus, the development can be sustainable.

As Mr. Capuano of Marriott said, "Hotels are 24-hour-a-day, 365-day businesses and they are ideal for driving job growth." For example, Marriott has a 377-room hotel under construction in Los Angeles that is expected to create 4,240 direct and indirect jobs by 2016, which will exceed its EB-5 goal of 3,360 jobs. The hotel's proximity to the Staples Center is one of the contributions for its job creation; guests staying at the Marriott are expected to increase the sales of tickets and souvenirs from the four professional sports teams. Furthermore, the giant electronic billboard outside the hotel even helps to generate jobs related to advertising, marketing, and sign rentals (Morrissey, 2012). Also, the recognition of branded hotel companies boosts foreign investors' confidence in the investment not only because of the credibility and dependability of big corporations, but also because of their diversity in the geographic market and the services they provide. For example, many of the hotels in the EB-5 program are typically affiliated with brands such as W Hotels, Marriott International, Hyatt and so on, which are categorized as luxury hotels in China. Therefore, it is much easier to convince Chinese investors to finance hotels, with which they are relatively familiar, than other projects.

Successful Hotel Financing Examples in the EB-5 Program

Though EB-5 has existed for a while, only in recent years has it gained popularity and stimulated the American economy. At first, not many enterprises were willing to try, since many developers regarded EB-5 as a marginal program for questionable projects that were unable to be financed any other way. Many of the big hospitality corporations did not pay much attention to the EB-5 program until Marriott entered that market. Marriott International has been encouraging its developers to consider EB-5 financing as a serious source of construction and development financing since that tends to be the most difficult financing to arrange. Before a new $88 million hotel for Marriott International was planned to open in downtown Seattle, the developers did not generate funds through any traditional form of financing such as bond or mortgage. Instead, the majority of funds was financed through the EB-5 program. Additionally, since the success of this

Seattle project in 2008, Marriott has taken full advantage of EB-5 financing and 14 more Marriott projects have been financed this way, including a Courtyard by Marriott in Midtown Manhattan, the downtown Milwaukee Marriott, a $168 million hotel near the Staples Center in Los Angeles, and the Residences at W Hollywood, one of the largest public-private partnership in California (Morrissey, 2012). During the last 18 months, other hospitality companies such as Hilton Worldwide, Hyatt Hotels, Starwood Hotels & Resorts Worldwide, and so on have actively participated in EB-5 financing. For example, there are 10 Hilton projects planned for the near future that will use EB-5 financing. Craig Mance, Hilton's Senior Vice President for Development for North America, commented that "EB-5 is a method of financing that is current, available, and very credible and it is helping deals move forward." In addition, in July 2012, FelCor Lodging Trust announced that it intended to generate $45 million through EB-5 for its $230 million Knickerbocker hotel's redevelopment project (Butler, 2012). As Marriott, Hilton, and other big hotel companies have become involved with EB-5, the credibility of the program has improved significantly (Morrissey).

Investors' Countries of Origin

USCIS data shows that in 2010 fiscal year, 41% or 772 of the total EB-5 visas issued were to investors and their families from Mainland China. Taiwanese and South Koreans also made up a large part of EB-5 investors, as did investors from Great Britain and Northern Ireland. By the third quarter of 2012, 4,813 EB-5 visas had been issued. The top countries were as follows: China—3, 710 (77%); South Korea—335 (7%); Taiwan—106 (2%); Venezuela—82 (2%); Iran—69(1%).

With its rapidly growing economy and increasing wealth, China provides a reliable source of foreign capital for U.S. developers. According to the *China's Private Wealth Report 2011*, published by China Merchants Bank, there is a growing interest in overseas immigration and real estate for Chinese and about 27% of Chinese billionaires have been involved in emigration investment. The number of Chinese participating in the EB-5 program is significantly higher than the number from any other country.

The authors interviewed a limited number of potential and existing Chinese investors to determine their motivations to invest in the U.S. and their concerns in participating in the EB-5 programs. The summary of the interviews shows that the EB-5 program is regarded more as a way to immigrate to the United States for Chinese investors than as a way to increase their wealth through investment. In other words, getting a green card is a priority for most of the Chinese investors. Specifically, Chinese investors' motivations for participating in the EB-5 program include the following:

- The main motivation for investors to choose EB-5 instead of other programs is to gain a green card; the EB-5 program takes a shorter time for immigrating to the United States than other programs.
- Also, EB-5 investors want to provide the next generation of their families with a better education and a relatively free environment in which they can exercise basic American rights, such as freedom of speech and freedom of religion.
- More career opportunities are another motivation for foreign investors to participate in the EB-5 programs. Enjoying the rights of American citizens (except voting) enables investors to find a satisfying job more easily, so that they have a higher quality of life.
- A better living environment and food safety is also thought of as a benefit of the EB-5 program.
- People who are exceptionally wealthy plan to diversify their investment by investing in geographically different places, in case there is any negative political or economic change in their home country. In addition, as a resident of the United States, they would have more financial security since they can be protected by the American government.
- Another motivation is that the program gives them a legal method of extending their businesses to American markets.

Investors' common concerns include high risk associated with the investment, such as not being able to get a return on their investment, not being able to obtain a green card, and the higher taxation that results from being a citizen in two countries.

Additionally, the number of investors in EB-5 from countries with civil unrest is growing since they are trying to escape the threat of violence, according to Jose Latour, a former State Department staffer.

Conclusions

The EB-5 program has played an active role in promoting the American economy and creating employment. Furthermore, the hotel industry, as a great match for this visa program, has benefited significantly in recent years, especially with the banks' tight supply of financing during the economic recession. As an alternative funding source for hotel developers, the EB-5 program is very attractive due to its affordability and flexibility. At the same time, foreign investors are attracted to hotel projects because of hotels' huge capacity to create jobs and the affiliation with famous international hotel chains. The regional center, as a matchmaker, not only facilitates the investment process, but also offers more benefits, such as counting indirect employment creation in the number of jobs created by a foreign investor. With the recent re-authorization of the regional center program by Congress and the White House and the U.S. economy's desperate need for job creation, it is clear that the EB-5 program will continue to grow and flourish and new hotel development projects will be in the pipeline. If the EB-6 program is finally passed by

Congress, that will provide yet another vehicle for attracting more foreign capital into the U.S. This win-win program not only boosts the American economy by helping to relieve the serious tension in the job market, but also further stimulates investment in other businesses beyond the initial hotel project. This will be possible because these foreign investors themselves will live in the U.S. and will take advantage of the myriad opportunities for business ownership that are available in the country. The permanent residency rights in the U.S. gained from the EB-5 program will lead to investors' further consumption of houses, cars, and household and other consumer products, which will create additional demand for the American economy. In sum, considering the current state of the U.S. economy and employment conditions, the EB-5 program is a great boost to the U.S. economy, especially for the hospitality industry.

Limitations of the Study

Data and literature regarding the EB-5 program is hard to obtain. The EB-5 program is still an unregulated industry; therefore, regional centers do not need to collect and produce information for the public. An organized and reliable resource of information about EB-5 is needed urgently. Additionally, the approval and denial of the I-526 and I-829 are limited for several reasons. Some cases might have been approved the year after they were filed, resulting in the difference between the total number of applications and the total number of approvals and denials. Additionally, it is very challenging for agencies to capture approval and denial rates for non-regional-center-affiliated cases (otherwise known as "stand alone" I-526 cases).

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